IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.3230 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Z.A. Haq, Advocate for the petitioner.
Mr. A.S. Fulzele, AGP for respondent nos. 1 and 2.
Mr. C.S. Kaptan, Advocate for Respondent Nos. 3 and 4.
Mr. V.P. Marpakwar, Advocate for Respondent no.5.

CORAM : A.H. JOSHI AND
R.C.CHAVAN,JJ.

DATE : 31st July, 2007.

1. By this petition, the petitioner, a Lecturer [Selection Grade] in the respondent no.4-Institution, takes exception to his being denied appointment as a Principal, on his claim of being the senior-most Lecturer.

The petitioner also takes exception to the appointment of Respondent No.5 as an In-charge Principal of Respondent No.4-Polytechnic.

2. We have heard learned Advocate Mr. Z.A. Haq for the petitioner, learned Asstt. Govt. Pleader Mr. Fulzele for Respondent Nos. 1 and 2, learned Advocate Mr. C.S. Kaptan for Respondent Nos. 3 and 4 and learned Advocate Mr. V.P. Marpakwar for Respondent No.5.

3. Since the petitioner is a Lecturer in Polytechnic, there is no dispute that the provisions of the Maharashtra Employees of Private Schools [Conditions of Service] Act and Rules framed thereunder apply. Section 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Act provides for an appeal by an employee of a private school to the School Tribunal, if he is superseded by the Management while making appointment to any post by promotion.

4. This Court, by a Judgment in Writ Petition No. 2563 of 2006, decided on 9th January, 2007 **[Nagpur Shikshan Mandal & another Vs. Haribhau Nathuji Mohod & others]** [delivered by one of us A. H. Joshi, J.], had held that a teacher suffering supersession could approach the School Tribunal.

5. In the above reported case, tenability of an appeal by a senior-most teacher who was denied promotion to the post of Assistant Headmaster by instructing a junior to work as Asstt. Headmaster, was challenged before the School Tribunal. The School Tribunal rejected the application. Aggrieved thereby, the Management had approached this Court, and the petition of Management was dismissed, holding that the Tribunal was entitled to entertain the appeal, even though the Management had merely instructed a junior to work as In-charge Asstt. Headmaster.

6. Learned Advocate for the petitioner submitted that this decision is reportedly a subject-matter of a Letters Patent Appeal. That does not alter the fact that there is a decision of this Court holding that an appeal to School Tribunal is tenable.

7. In any case, in view of the clear provisions of Section 9 of the MEPS Act, which enable a person superseded to prefer an appeal before the School Tribunal, there should be no difficulty for the petitioner to seek the alternative statutory remedy of

approaching the School Tribunal which is available to him. The apprehension of the learned Advocate for the petitioner that the School Tribunal may not be able to fashion the relief required to redress the grievance of the petitioner in view of provisions of Section 11 of the MEPS Act is equally unfounded, since Clause [f] of Sub-section [2] of Section 11 of the MEPS Act would enable the Tribunal to give such other relief to the petitioner as may be necessary, having regard to the circumstances of the case.

8. In view of this, since the petitioner can avail of an alternative remedy, we are not inclined to entertain the petition.

9. Petition is consequently dismissed with no order as to costs.

Judge Judge

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